

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ELDER TOLEDO RODRIGUES,

Plaintiff,

1:17-CV-00337 MAT

v.

DECISION AND ORDER

AMERICAN SECURITY INSURANCE COMPANY,
ET AL.,

Defendants.

BACKGROUND

Pro se Plaintiff Elder Toledo Rodrigues filed this action in New York State Supreme Court on February 22, 2017, against defendants American Security Insurance Company, Green Tree Servicing LLC, and Ditech Financial LLC. Docket No. 1 at ¶ 5. On April 20, 2017, defendant American Security Insurance Company filed a Notice of Removal, seeking removal of the case to the United States District Court for the Western District of New York. Docket No. 1. Defendants thereafter filed motions to dismiss Plaintiff's amended complaint. Docket Nos. 38, 39. On May 21, 2019, the Court granted Defendants' motions to dismiss, and dismissed Plaintiff's amended complaint with prejudice. Docket No. 48. The Judgment in favor of Defendants was entered on May 22, 2019. Docket No. 49. Copies of the Court's Decision and Order and the Judgment were mailed to Plaintiff. *Id.*

Thereafter, on July 26, 2019, Plaintiff filed a motion for an extension of time to file a Notice of Appeal, as well as a motion for leave to appeal *in forma pauperis*. Docket Nos. 50, 51. In his motion for an extension of time to file a Notice of Appeal, Plaintiff states that he "appeared at the Clerk's office for assistance within the allotted time for appeal, but the help desk was closed." Docket No. 50 at 1. Plaintiff further states that his "appeal has substantial merit," and "[p]er docket entry 46 the case is subject to an automatic bankruptcy stay." *Id.* Plaintiff also filed a Notice of Appeal on the same date. Docket No. 52.

For the following reasons, Plaintiff's motion for an extension of time to file a Notice of Appeal is denied as untimely, and his motion for leave to appeal *in forma pauperis* is denied as moot.

ANALYSIS

Plaintiff's motion for an extension of time to file a Notice of Appeal is governed by Rule 4 of the Federal Rules of Appellate Procedure. According to Rule 4(a)(5):

(5) Motion for Extension of Time.

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this

Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

F. R. App. P. 4(a)(5) (emphasis added).

As noted above, the Judgment in favor of Defendants was entered on May 22, 2019. Docket No. 49. Plaintiff had thirty days to file a Notice of Appeal, which expired on June 21, 2019. See Fed. R. App. P. 4(a)(1)(A) ("In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from."). Accordingly, pursuant to Fed. R. App. P. 4(a)(5)(A)(i), Plaintiff was required to file for an extension of time by thirty days after June 21, 2019, *i.e.*, by July 21, 2019. Plaintiff's motion, which was filed on July 26, 2019, is therefore untimely, and must be denied.

Because the Court has denied Plaintiff's motion for an extension of time to file a Notice of Appeal (Docket No. 50), his motion for leave to appeal *in forma pauperis* (Docket No. 51), is denied as moot.

CONCLUSION

For the reasons set forth above, Plaintiff's motion for an extension of time to file a Notice of Appeal (Docket No. 50) is denied as untimely, and his motion for leave to appeal *in forma pauperis* (Docket No. 51) is denied as moot.

ALL OF THE ABOVE IS SO ORDERED.

S/Michael A. Telesca

HONORABLE MICHAEL A. TELESKA
UNITED STATES DISTRICT JUDGE

DATED: August 2, 2019
 Rochester, New York